

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

RAYMOND HERRERA, JR., and TABITHA §
HERRERA, Individually and as Personal §
Representatives of the Estate of RAYMOND §
HERRERA, SR. §

Plaintiffs,

v.

ODFJELL BOW FORTUNE, and her §
Engines, boilers, tackles, apparel, etc., in rem §

Defendant.

CAUSE NO. 3:20-cv-17

IN ADMIRALTY

Plaintiffs' Motion for Voluntary Dismissal without Prejudice

Pursuant to Federal Rule of Civil Procedure 41(a)(1), Plaintiffs Raymond Herrera, Jr. and Tabitha Herrera, Individually and as Personal Representatives of the Estate of Raymond Herrera, Sr. hereby file this motion for voluntary dismissal without prejudice against Defendant, and would show the Court as follows:

I.

The Court Should Grant Plaintiff's Voluntary Dismissal without Prejudice

Federal Rule of Civil Procedure 41(a)(1)(A)(i) states, "the plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." FED. R. CIV. P. 41(a)(1)(A)(i). "Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including

the same claim, a notice of dismissal operates as an adjudication on the merits.” FED. R. Civ. P. 41(a)(1)(B).

Here, Defendant has yet to file an answer or a motion for summary judgment. Plaintiffs have not dismissed any previous federal- or state-court action based on the same claim. Accordingly, voluntary dismissal without prejudice is proper. A proposed order acknowledging Plaintiffs’ dismissal is attached as Exhibit A for the Court’s convenience.

II.

Conclusion

Plaintiffs respectfully request that the Court grant their Motion for Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1).

Respectfully submitted,

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/s/ Cory Itkin

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure on January 21, 2020.

/s/ Cory Itkin

Cory Itkin